

In the Supreme Court of the United States

OCTOBER TERM, 1991

ELLIS B. WRIGHT, JR., WARDEN, ET AL., PETITIONERS

v.

FRANK ROBERT WEST, JR.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

**BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONERS**

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QUESTION PRESENTED

The United States will address the following question:

In determining whether to grant a petition for a writ of habeas corpus by a person in custody pursuant to a judgment of a state court, should a federal court give deference to the state court's application of law to the specific facts of the petitioner's case or should it review the state court's determination *de novo*?

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Introduction and summary of argument	5
Argument:	
I. A state court's reasonable, good faith applica- tion of law to fact in a criminal proceeding is entitled to deference in subsequent federal habeas corpus proceedings	8
A. <i>Teague</i> and its progeny establish that fed- eral habeas courts must not disrupt reason- able, good faith interpretations of law by state courts	9
B. Factual findings in state criminal proceedings are presumed to be correct in subsequent fed- eral habeas corpus proceedings	12
C. As a result of <i>Teague</i> and Section 2254(d), current doctrine presents the incongruous situation that the only issues effectively sub- ject to de novo review on federal habeas corpus are mixed questions of law and fact....	12
1. Our proposed harmonization of the stand- ard of review would fully serve the pur- poses of habeas corpus, and would avoid the dilution of <i>Teague</i> that will inevitably result if the current incongruous situa- tion is maintained	13
2. <i>Teague</i> and its progeny undermined the premises underlying the current treat- ment of mixed questions of law and fact..	18
II. In this case, the state courts acted reasonably and in good faith in rejecting respondent's suffi- ciency of the evidence claim	22
Conclusion	24

TABLE OF AUTHORITIES

Cases:	Page
<i>Brewer v. Williams</i> , 430 U.S. 387 (1977)	12, 21
<i>Brown v. Allen</i> , 344 U.S. 443 (1953)	12, 21
<i>Bunch v. Thompson</i> , No. 90-4001 (4th Cir. Nov. 27, 1991)	10, 11
<i>Butler v. McKellar</i> , 494 U.S. 407 (1990)	6, 8, 10, 11
<i>Coleman v. Thompson</i> , 111 S. Ct. 2546 (1991)	8, 13
<i>Cosby v. Jones</i> , 682 F.2d 1373 (11th Cir. 1982)	4
<i>Cuyler v. Sullivan</i> , 446 U.S. 335 (1980)	12, 21
<i>Delo v. Stokes</i> , 110 S. Ct. 1880 (1990)	18
<i>Donnelly v. DeChristoforo</i> , 416 U.S. 637 (1974)	7, 17
<i>Duckworth v. Eagan</i> , 492 U.S. 195 (1989)	15, 22
<i>Engle v. Isaac</i> , 456 U.S. 107 (1982)	2
<i>Estelle v. McGuire</i> , 112 S. Ct. 475 (1991)	21
<i>Fay v. Noia</i> , 372 U.S. 391 (1963)	22
<i>Irvin v. Dowd</i> , 366 U.S. 717 (1961)	12, 21
<i>Jackson v. Virginia</i> , 443 U.S. 307 (1979)	3-4, 7, 8, 17, 18, 19, 20
<i>Kuhlmann v. Wilson</i> , 477 U.S. 436 (1986)	13, 22
<i>Lewis v. Jeffers</i> , 110 S. Ct. 3092 (1990)	21
<i>Mackey v. United States</i> , 401 U.S. 667 (1971)	9, 20
<i>Miller v. Fenton</i> , 474 U.S. 104 (1985)	12, 15, 16, 17, 21
<i>Murray v. Carrier</i> , 477 U.S. 478 (1986)	2
<i>Neil v. Biggers</i> , 409 U.S. 188 (1972)	12, 21
<i>Penry v. Lynaugh</i> , 492 U.S. 302 (1989)	9
<i>Reed v. Ross</i> , 468 U.S. 1 (1984)	2
<i>Rose v. Lundy</i> , 455 U.S. 509 (1982)	22
<i>Saffle v. Parks</i> , 494 U.S. 484 (1990)	6, 8, 9, 10
<i>Sawyer v. Smith</i> , 110 S. Ct. 2822 (1990)	9, 10, 15
<i>Stone v. Powell</i> , 428 U.S. 465 (1976)	15, 22
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	12, 21
<i>Sumner v. Mata</i> , 449 U.S. 539 (1981)	12
<i>Teague v. Lane</i> , 489 U.S. 288 (1989)	5, 6, 8, 9, 10, 13, 18, 20, 22
<i>Townsend v. Sain</i> , 372 U.S. 293 (1963)	12
<i>United States v. Frady</i> , 456 U.S. 152 (1982)	8, 20
<i>United States v. Leon</i> , 468 U.S. 897 (1984)	14
<i>United States v. Restrepo-Contreras</i> , 942 F.2d 96 (1st Cir. 1991), cert. denied, No. 91-6502 (Jan. 21, 1992)	23
<i>Wainwright v. Sykes</i> , 433 U.S. 72 (1977)	2

Constitution and statutes:	Page
U.S. Const. Amend. IV	15
28 U.S.C. 2254	1, 3
28 U.S.C. 2254 (d)	5, 6, 12, 16, 18
28 U.S.C. 2255	8
Miscellaneous:	
P. Bator, D. Meltzer, P. Mishkin, D. Shapiro, <i>Hart & Wechsler's The Federal Courts and the Federal System</i> (3d ed. 1988)	17
Monaghan, <i>Constitutional Fact Review</i> , 85 Colum. L. Rev. 229 (1985)	15

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INTEREST OF THE UNITED STATES

This case presents the question whether a federal court in a habeas corpus proceeding under 28 U.S.C. 2254 should defer to the state court's application of law to the specific facts of the habeas petitioner's case, or whether the federal court should review the state court determination de novo. Resolution of this issue requires assessment of the proper balance between the scope of federal habeas corpus and interests in comity and the finality of state determinations. The United States, no less than the States, has an interest in maintaining that proper balance. In addition, the United States has in the past participated in several important habeas corpus cases. See,

e.g., *Wainwright v. Sykes*, 433 U.S. 72 (1977); *Reed v. Ross*, 468 U.S. 1 (1984); *Engle v. Isaac*, 456 U.S. 107 (1982); *Murray v. Carrier*, 477 U.S. 478 (1986).

STATEMENT

Sometime between December 13 and December 26, 1978, Angelo Cardova's home in Westmoreland County, Virginia was burglarized and items worth about \$3,000 were taken. Pet. App. 2. On January 10, 1979, while investigating an unrelated crime, law enforcement authorities discovered goods stolen from the Cardova home in the home of respondent Frank West. The goods recovered included two television sets, a mirror framed with shells, a wood carving, groceries, a fake fur jacket with the name Esther embroidered in the lining, a silk jacket decorated with the term "Korea 1970" a mounted lobster, and other property. *Id.* at 2-3. The value of these items was about \$1,100. *Ibid.*

Respondent was indicted and tried for grand larceny. He testified at trial that he had bought the stolen goods at various flea markets. J.A. 21. In particular, respondent maintained that he had purchased some of the items from one Ronnie Elkins, but could not recall when or where he had done so. *Id.* at 22-28. The court of appeals characterized respondent's testimony as "somewhat confused," and noted that respondent was unable to account for how he had obtained some of the stolen goods. Pet. App. 4. Elkins did not testify, and respondent explained that he had not called Elkins as a witness because he had not known until trial which items he had been accused of stealing. *Ibid.*

The jury was properly instructed as to the elements of the offense for which respondent was

charged, as well as to the fact that it must have a moral conviction of respondent's guilt beyond a reasonable doubt in order to convict. J.A. 32-36. The jury was also instructed concerning the long-established Virginia common law inference that a person in exclusive possession of recently stolen goods stole those goods if he fails to explain, or falsely explains, his possession. Pet. App. 4. The jury convicted. Respondent moved to set aside his conviction on the ground that the evidence was insufficient to support the verdict, and the trial court denied the motion. On May 30, 1980, the Supreme Court of Virginia rejected respondent's appeal, having found no reversible error. J.A. 37-41.

Seven years later, respondent filed a state habeas corpus petition, arguing that the evidence against him was insufficient to support the jury's verdict. J.A. 42-43. On May 13, 1988, the Supreme Court of Virginia denied relief. *Id.* at 48-49.

Respondent thereafter filed a habeas corpus petition in federal district court under 28 U.S.C. 2254, alleging *inter alia* that his conviction was unconstitutional because the evidence against him did not prove his guilt beyond a reasonable doubt. The district court denied relief, holding that credibility determinations are beyond the province of a federal habeas proceeding, and that a jury could rationally have found respondent guilty beyond a reasonable doubt based on the evidence presented. Pet. App. 23-33.

On April 29, 1991—almost eleven years after respondent's conviction became final—the court of appeals reversed the district court, and ordered that respondent be granted habeas relief. Pet. App. 1-22. The court of appeals analyzed respondent's claim under the sufficiency standard of *Jackson v. Virginia*,

443 U.S. 307 (1979), which requires the court to determine whether, viewing all the evidence in the light most favorable to the prosecution, any rational trier of fact could have found guilt beyond a reasonable doubt.

The court of appeals held that it was irrational for the jury to infer from the basic facts proved by the Commonwealth that respondent was guilty beyond a reasonable doubt.¹ Pet. App. 20. The court acknowledged that respondent's testimony was confused, but thought that his explanation was not "inherently implausible" and could "not fairly be treated as positive evidence of guilt." *Id.* at 18-19. Respondent's testimony "was, at most, a neutral factor in assessing the probative force of the inference." *Id.* at 19. Having therefore removed from the analysis the fact that the jury disbelieved respondent's "confused" testimony, the court held that the lapse in time between the theft and the discovery of the stolen goods in respondent's home, the fact that the goods possessed by respondent made up only a third of the value of the stolen goods, and the lack of corroborating evidence, made it impossible for any trier of fact to find guilt beyond a reasonable doubt. *Id.* at 14-20. The court held that respondent's conviction therefore violated due process and that he was entitled to habeas relief. *Id.* at 20.

The court acknowledged "special caution and anxiety" in concluding that a state jury of twelve acted irrationally, and that a state trial and appellate court, as well as a federal district court, were wrong

¹ The court of appeals adopted, as a framework for analyzing the rationality of a jury verdict based on the common law permissive inference, the Eleventh Circuit's analysis in *Cosby v. Jones*, 682 F.2d 1373 (1982).

in ruling that the evidence was sufficient to convince a rational trier of fact of respondent's guilt. Pet. App. 20-21. "Aware of its special delicacy * * * we nevertheless have felt obliged under the constitutional test we apply to make that determination here." *Id.* at 21.

INTRODUCTION AND SUMMARY OF ARGUMENT

In reviewing habeas corpus claims, federal courts are confronted with three sorts of questions: purely legal questions, mixed questions of law and fact, and factual questions. This Court's decision in *Teague v. Lane*, 489 U.S. 288 (1989), and later cases applying its principles, altered the scope of federal court review of state court legal determinations by restricting habeas corpus review of claims seeking "new" rules of law. As a result of these recent decisions, federal habeas corpus courts now must ordinarily defer to reasonable, good faith interpretations of law by state courts. As to factual questions, it has long been established that state court factual conclusions are presumptively correct in federal habeas corpus proceedings. 28 U.S.C. 2254(d). Against this backdrop, this case calls for the Court to determine whether the third category—mixed questions of law and fact—should continue to be the sole type of issue subject to de novo review in federal habeas corpus proceedings. It should not.

1. Federal habeas courts now defer to reasonable, good faith interpretations of law by state courts. This Court has established that habeas review is not available if the habeas petitioner seeks to establish a "new rule" to overturn his conviction; the Court has in turn defined a "new rule" as one that was not unambiguously compelled by existing precedent at the

time the conviction became final. See *Teague v. Lane*, 489 U.S. 288, 299-310 (1989) (plurality opinion); *Butler v. McKellar*, 494 U.S. 407, 412-416 (1990); *Saffle v. Parks*, 494 U.S. 484, 488 (1990). The question on habeas is not whether the state court's legal determination was the same one the federal habeas court would make, but whether the state court's determination conflicted with an established rule so clear as not to be "susceptible to debate among reasonable minds." *Butler*, 494 U.S. at 415. If it did not, then the habeas petitioner seeking to overturn that legal determination is seeking a "new rule" under *Teague*, and is barred from habeas relief. The end result of *Teague* and its progeny is to "validate[] reasonable, good-faith interpretations of existing precedents by state courts even though they are shown to be contrary to later decisions." *Butler*, 494 U.S. at 414.

As to findings of fact, it has long been established that factual findings in state criminal proceedings are entitled to a presumption of correctness in federal habeas proceedings. 28 U.S. 2254(d).

2. The current habeas landscape is thus characterized by the incongruous feature that mixed questions of law and fact are the only issues subject to de novo review in federal habeas corpus proceedings. As with legal and factual issues, however, the purposes of habeas corpus are fully served by deferential habeas review of application of law to fact. In terms of the underlying functions of habeas corpus, there is no meaningful distinction between state court interpretations of existing law and application of that law to particular facts. A state court that has acted reasonably and in good faith cannot be expected to do more, and will not be prompted to act more carefully by the prospect of a reversal years later on fed-

eral habeas review of a reasonable, but technically wrong, decision.

Unless this Court brings the standard of review for mixed questions of law and fact into line with the standard for reviewing legal questions and the standard for reviewing factual determinations, it is predictable that habeas claims will typically be couched in terms that purport to seek application of settled law to specific facts. Claims that in fact rest upon a call for expansion of the law on habeas corpus will be recast as claims regarding the sufficiency of the evidence, or as claims going to the "fundamental fairness" of the habeas petitioner's trial. See *Jackson v. Virginia*, 443 U.S. 307 (1979); *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974). This case illustrates that danger. Respondent's real quarrel is not with the sufficiency of the evidence at his trial, but with the validity of the common law inference that the jury was permitted to apply. Yet a frontal assault on the constitutionality of the permissive inference would have been barred by *Teague* and its progeny.

The rule we advocate is undoubtedly in tension with this Court's past treatment of mixed questions of law and fact. But the premises for de novo review of such questions have been fatally undermined by *Teague* and its progeny. In terms of the nature and function of habeas corpus, there is no basis for disparate treatment of legal and mixed questions. In addition, the Court's analysis in *Jackson v. Virginia*, *supra* (establishing the rule that federal habeas courts must review sufficiency of the evidence claims to determine whether any rational trier of fact could have found guilt beyond a reasonable doubt), was explicitly premised on the view that the federal

courts perform the same function on direct and collateral review. 443 U.S. at 317-318. That premise has since been undermined. See, e.g., *Teague*, 489 U.S. at 306 (plurality opinion); *United States v. Frady*, 456 U.S. 152, 164-165 (1982) (proceedings under 28 U.S.C. 2255).

3. Applying a rule of deference to reasonable state court treatment of mixed questions of law and fact, the proper outcome in this case is clear. The Virginia courts acted reasonably in concluding that the evidence against respondent was sufficient to establish his guilt beyond a reasonable doubt.

ARGUMENT

I. A STATE COURT'S REASONABLE, GOOD FAITH APPLICATION OF LAW TO FACT IN A CRIMINAL PROCEEDING IS ENTITLED TO DEFERENCE IN SUBSEQUENT FEDERAL HABEAS CORPUS PROCEEDINGS

This Court's recent decisions have emphasized the basic purposes of federal habeas corpus—to ensure that state criminal proceedings are conducted consistently with the Constitution as interpreted at the time of the proceedings, and to deter unconstitutional action on the part of state courts. See *Teague v. Lane*, 489 U.S. 288, 306-307 (1989) (plurality opinion); *Butler v. McKellar*, 494 U.S. 407, 413-414 (1990); *Saffle v. Parks*, 494 U.S. 484, 488 (1990). The Court has also emphasized that, in determining the scope of habeas corpus, the costs of habeas review in terms of finality and comity must be considered. *Butler*, 494 U.S. at 412-414; *Coleman v. Thompson*, 111 S. Ct. 2546, 2554 (1991). The purposes of habeas review are fully served, and its costs minimized, by a rule that a state court's reasonable, good

faith application of law to fact in a criminal proceeding is entitled to deference in federal habeas corpus.

A. *Teague* And Its Progeny Establish That Federal Habeas Courts Must Not Disrupt Reasonable, Good Faith Interpretations Of Law By State Courts

In order to achieve the proper ends of habeas corpus, while minimizing injury to important values of finality and comity, this Court held in *Teague* that a habeas corpus petitioner may not seek to overturn his conviction based on a "new rule" of law. See 489 U.S. at 310 (plurality opinion); *id.* at 316-317 (White, J., concurring in part and concurring in the judgment).² *Teague* defined a new rule as one that is not "dictated by precedent existing at the time the defendant's conviction became final." *Id.* at 301 (plurality opinion).

In the wake of *Teague*, the Court in *Butler*, *Saffle*, and *Sawyer v. Smith*, 110 S. Ct. 2822 (1990), reaffirmed this understanding of what constitutes a "new rule" under *Teague*. The Court stated in *Saffle* that a habeas petitioner is seeking a new rule unless "a state court considering [the] claim at the time [the petitioner's] conviction became final would have felt compelled by existing precedent to conclude that the rule * * * was required by the Constitution." *Saffle*, 494 U.S. at 488. For a claim to be compelled or

² This rule is subject to two exceptions: A claim seeking a new rule is cognizable on habeas if the rule (1) places certain kinds of primary conduct beyond the power of the State to proscribe, or (2) is a watershed rule of procedure without which the likelihood of an accurate verdict is seriously reduced. See *Teague v. Lane*, 489 U.S. at 311 (plurality opinion); *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989); see also *Mackey v. United States*, 401 U.S. 667, 692-693 (1971) (separate opinion of Harlan, J.).

dictated by existing precedent, it is not enough that it "is within the 'logical compass' of an earlier decision, or indeed that it is 'controlled' by a prior decision," because even in such circumstances it is often possible to reach a "reasonable contrary conclusion[]." *Butler*, 494 U.S. at 415. See also *Saffle*, 494 U.S. at 491 (if existing precedents "inform, or even control or govern, the analysis of [the habeas petitioner's] claim, it does not follow that they compel the rule that [he] seeks"); *Sawyer*, 110 S. Ct. at 2828 (the fact that the rule sought by a habeas petitioner was "a predictable development" based on existing law does not suffice to show that the rule is not new). If the legal interpretation sought by the habeas petitioner was "susceptible to debate among reasonable minds" at the time his conviction became final, *Butler*, 494 U.S. at 415, then it is a "new rule" under *Teague*, *Butler*, *Saffle*, and *Sawyer*—i.e., one that was not "dictated by precedent," *Teague*, 489 U.S. at 301 (plurality opinion)—and the claim based on that new rule is accordingly not cognizable on federal habeas corpus.

Because *Teague* made the inquiry into whether a habeas petitioner seeks a new rule ~~is~~ a threshold question, see 489 U.S. at 300-301, 315-316 (plurality opinion), the effect of that case—together with the elaboration in subsequent cases of what constitutes a "new rule"—is to remove from federal habeas proceedings any room for disagreement over the appropriate legal standard to be applied.³ If there is any

³ Our reading of the effect of *Teague* and its progeny is confirmed by the Fourth Circuit's decision in *Bunch v. Thompson*, No. 90-4001 (Nov. 27, 1991) (Wilkinson, J.), where the court held that the state court's resolution of a close legal question "warrants respect from a federal habeas

reasonable difference in opinion as to the proper legal standard, *Saffle* and *Butler* make clear that the habeas petitioner is seeking a new rule; and *Teague* held that claims seeking to establish new rules are not cognizable in habeas. Of course, there may be instances in which state courts refuse to recognize established law—that is, act unreasonably or in bad faith—and under *Teague* and its progeny federal habeas corpus is available to correct and deter such errors. The result of these developments, as Justice Brennan correctly stated, is that a federal habeas court "must defer to the state court's decision rejecting the claim unless that decision is patently unreasonable." *Butler*, 494 U.S. at 422 (Brennan, J., dissenting).⁴

court as one that reasonable jurists could make." Slip op. 10. The court recognized that mere disagreement with the state court's legal judgment would entail creation of a new rule under *Butler*, and therefore refused to consider the habeas petitioner's claim. *Id.* at 5. Indeed, even the dissent in *Bunch* did not dispute that a federal habeas court is bound to defer to reasonable state court legal judgments, but argued that the law was too clear to admit of reasonable dispute. *Id.* at 23 (Sprouse, J., dissenting).

⁴ See also *Butler*, 494 U.S. at 417-418 (Brennan, J., dissenting) ("A legal ruling sought by a federal habeas petitioner is now deemed 'new' as long as the correctness of the rule, based on precedent existing when the petitioner's conviction became final, is susceptible to debate among reasonable minds. Put another way, a state prisoner can secure habeas relief only by showing that the state court's rejection of the constitutional challenge was so clearly invalid under then-prevailing legal standards that the decision could not be defended by any reasonable jurist.") (citation and internal punctuation removed).

B. Factual Findings In State Criminal Proceedings Are Presumed To Be Correct In Subsequent Federal Habeas Corpus Proceedings

As to findings of fact, Congress has specifically provided that state court factual determinations are "presumed to be correct" in federal habeas, subject to eight exceptions that generally go to ensuring that the state court fully and fairly adjudicated the habeas petitioner's federal claim. 28 U.S.C. 2254(d); see also *Townsend v. Sain*, 372 U.S. 293 (1963). In instances in which one of the statutory exceptions applies, a federal district court on habeas review may conduct an evidentiary hearing. State court factual findings are, however, generally conclusive. See, e.g., *Sumner v. Mata*, 449 U.S. 539 (1981).

C. As A Result Of *Teague* And Section 2254(d), Current Doctrine Presents The Incongruous Situation That The Only Issues Effectively Subject To De Novo Review On Federal Habeas Corpus Are Mixed Questions Of Law And Fact

Prior to the rule established by *Teague*, *Butler*, and *Saffle*, this Court often treated mixed questions of law and fact as subject to independent review in federal habeas corpus. See, e.g., *Miller v. Fenton*, 474 U.S. 104, 112-118 (1985); *Strickland v. Washington*, 466 U.S. 668, 698 (1984); *Cuyler v. Sullivan*, 446 U.S. 335, 341-342 (1980); *Brewer v. Williams*, 430 U.S. 387, 403-404 (1977); *Neil v. Biggers*, 409 U.S. 188, 193 n.3 (1972); *Irvin v. Dowd*, 366 U.S. 717, 723 (1961); *Townsend v. Sain*, 372 U.S. at 309 n.6, 318; *Brown v. Allen*, 344 U.S. 443, 507-508 (1953) (opinion of Frankfurter, J.). Subsequent developments in the law have fatally undermined the legal premises of that pre-*Teague* rule. As matters presently stand, only unreasonable state court inter-

pretations of *law* are subject to habeas review, and state court determinations of *fact* are ordinarily conclusive. It is accordingly incongruous that state court application of settled law to historical fact should be subject to independent review in federal habeas. Nothing in reason or experience suggests that federal habeas review of mixed questions of law and fact should be more searching than review of pure questions of law.

1. *Our Proposed Harmonization Of The Standard Of Review Would Fully Serve The Purposes Of Habeas Corpus, And Would Avoid The Dilution Of Teague That Will Inevitably Result If The Current Incongruous Situation Is Maintained*

In determining the scope of habeas corpus review, the Court has stated that the purposes of the writ must be considered in conjunction with interests in finality and comity. *Teague*, 489 U.S. at 308 (plurality opinion); *Coleman v. Thompson*, 111 S. Ct. at 2554; see also *Kuhlmann v. Wilson*, 477 U.S. 436, 447 (1986) (plurality opinion). In adopting the doctrine that "new rules" are not cognizable in habeas, the Court recognized that the purposes informing habeas—giving due latitude to countervailing interests in finality and comity—are fully served if federal oversight of state court legal interpretations is limited to determining that the state court acted reasonably and in good faith. Moreover, this is so even if the state court is later proved to have been wrong.⁵ In terms of the underlying functions of

⁵ Under *Teague* and the cases applying it, a state court's interpretation of federal law that is later shown to be erroneous nonetheless is not supplanted in a federal habeas proceeding as long as the state court's interpretation reflects a reasonable, good faith construction of the law. It necessarily

habeas corpus, no meaningful distinction can be drawn between state court interpretations of existing law and application of that law to the facts of a particular case.

Just as a reasonable, good faith interpretation of the Constitution by a state court may be wrong (but nonetheless is not cognizable on habeas because the interpretation showing the state court's view to be wrong would constitute a new rule) so, too, a reasonable, good faith application of law to fact in light of the prevailing legal standards at the time of the conviction is similarly deserving of deference. Habeas corpus must serve the important purpose of policing and deterring unconstitutional state court criminal convictions, but, for the reasons set forth in *Teague* and its progeny, that purpose is fully served—and the costs of habeas are minimized—by a habeas standard that defers to reasonable, good faith application of law to facts by the state courts.

There is no reason to think that deferential review of state court determinations of mixed questions of law and fact will undermine the deterrent purposes of habeas. A state court that has acted reasonably and in good faith cannot be expected to do more; such a court will not be prompted to act differently by the prospect that a federal habeas court years down the road will overturn its judgment regarding the legal import of the facts before it. Cf. *United States v. Leon*, 468 U.S. 897, 918-919 (1984) (the exclusionary rule cannot be expected to deter objectively reasonable law enforcement activity). Moreover, any suggestion that the state courts do not endeavor con-

follows that, under *Teague*, the purposes of habeas corpus are fully served if the federal courts ensure that state criminal proceedings are conducted reasonably and in good faith.

scientiously to apply constitutional law to the facts before them is “premised on a skepticism of state courts” that this Court has roundly condemned. *Sawyer v. Smith*, 110 S. Ct. at 2831. See also Monaghan, *Constitutional Fact Review*, 85 Colum. L. Rev. 229, 272 (1985) (“The premise that state courts are to be suspected of distorted factfinding and law application is disquieting. After all, the Constitution presupposes that the state courts will enforce declared federal law fairly.”).

Since this Court's decision in *Stone v. Powell*, 428 U.S. 465 (1976), Fourth Amendment claims—which involve application of law to facts—have been categorically excluded from habeas review so long as an opportunity for full and fair adjudication of the claim was afforded at the state level. The Court took this step in recognition of the fact that a contrary rule would not appreciably further the underlying purposes of habeas corpus review, including its deterrence function, and therefore could not be justified in light of the significant costs associated with habeas review generally. See also *Duckworth v. Eagan*, 492 U.S. 195, 205-214 (1989) (O'Connor, J., concurring) (arguing that *Stone* rule should apply to *Miranda* claims). Nothing suggests that limiting federal court oversight of state court treatment of Fourth Amendment claims to direct review has caused the state courts to be any less vigilant in discharging their duty to uphold the Fourth Amendment.

The standard of review we advocate also has the considerable virtue of workability. As this Court has recognized, it is often difficult to discern the line between mixed questions of law and fact and pure questions of law. *Miller v. Fenton*, 474 U.S. 104, 113 (1985). In *Miller*, the Court acknowledged that it

"has not charted an entirely clear course in this area," and that "the appropriate methodology for distinguishing questions of fact from questions of law has been, to say the least, elusive." *Id.* at 113. Moreover, "much of the difficulty in this area stems from the practical truth that the decision to label an issue a 'question of law,' a 'question of fact,' or a 'mixed question of law and fact' is sometimes as much a matter of allocation as it is of analysis." *Id.* at 113-114. On the facts in *Miller*, the Court thus focused upon which judicial actor was best positioned to make the judgment in question. *Id.* at 114.⁶

As a result of *Teague*, the determination whether a habeas petition presents a mixed question of law and fact or a purely legal question is crucial.⁷ It is

⁶ In *Miller*, the Court concluded that the mixed question of law and fact at issue (whether a confession was involuntary) was subject to independent federal review in habeas corpus. 474 U.S. at 112. This stemmed from the Court's belief that the federal courts were as well situated as the state courts to make the determination, and the Court's view that federal oversight in this area has "traditionally played an important parallel role" in protecting constitutional rights. *Id.* at 117-118. The underlying premise of *Miller*—that federal courts review legal questions on a de novo basis—has, as we have shown, changed as a result of *Teague*, *Butler*, and *Saffie*. It would be incongruous to require federal courts to defer to state court legal conclusions (judgments that the federal courts are undoubtedly as capable as the state courts to make), but to subject state court application of law to facts to de novo review.

⁷ Prior to *Teague*, the distinction between a factual question and a mixed question was similarly important. If a question was found to be factual, the state court resolution was entitled to Section 2254(d) deference; if it was found to be legal, independent federal habeas review was the rule. As this Court has recognized, this resulted in questionable con-

entirely predictable that habeas petitioners with claims that in reality seek a new rule will now couch those claims in terms that purport to seek application of settled law to the specific facts of their cases. Applying a different standard of review to so-called mixed questions of law and fact would thus facilitate end-runs around *Teague* and its progeny. Habeas claims that, in truth, rest upon a call for expansion of the law will be recast as claims regarding the sufficiency of the evidence, or as claims going to the "fundamental fairness" of the trial or penalty phase. See *Jackson v. Virginia*, 443 U.S. 307 (1979); *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974) (outside of any specific constitutional guarantee criminal trial may be so fundamentally unfair as to constitute a denial of due process).

This case vividly demonstrates the danger. Respondent's real quarrel is with the common law inference that one in possession of recently stolen goods who fails to explain, or falsely explains, his possession is responsible for the theft of those goods. The lower court's opinion roundly criticizes the common law inference as out of touch with modern reality. See Pet. App. 11-13. Yet because *Teague* forecloses a frontal assault on the inference through the creation of a new rule on habeas corpus, respondent and the court below recast his claim as one going to the sufficiency of the evidence under *Jackson*. This practice will surely be repeated in other habeas cases unless

tortions of mixed questions into the factual or legal rubric, depending upon the context. See *Miller v. Fenton*, 474 U.S. at 112-113 (gathering examples); see also P. Bator, D. Meltzer, P. Mishkin, D. Shapiro, *Hart & Wechsler's The Federal Courts and the Federal System* 1565-1566 (3d ed. 1988) (same).

the standards of review under *Teague*, Section 2254(d), and the mixed question cases are harmonized.⁸

2. *Teague And Its Progeny Undermined The Premises Underlying The Current Treatment Of Mixed Questions Of Law And Fact*

We recognize that the doctrine we are proposing is inconsistent with this Court's pre-*Teague* statements concerning mixed questions of law and fact on habeas corpus review. We believe, however, that the tension is produced by the anomalous nature of those decisions in light of this Court's recent habeas corpus decisions. In short, the underlying premises for de novo review of mixed questions have been undermined by *Teague* and its progeny.

Of particular relevance is *Jackson v. Virginia*, 443 U.S. 307 (1979). There, the Court held that the standard of review for a federal habeas court con-

⁸ Maintaining a different and less stringent standard for so-called mixed questions of law and fact thus carries the danger of encouraging abuse and nullifying this Court's decision in *Teague*. *Teague* and its progeny responded in part to a growing problem of repetitive and abusive habeas corpus filings, particularly in capital cases. See, e.g., *Delo v. Stokes*, 110 S. Ct. 1880 (1990) (fourth federal habeas corpus petition filed within days of date set for execution). Before *Teague*, prisoners would often dress old claims in the guise of recent decisions of this Court—circumventing procedural default and abuse of the writ doctrines by contending that their claims were based on “new law” previously unavailable to them. *Teague*'s holding that retroactivity is a threshold question and its conclusion that “a case announces a new rule if the result was not dictated by precedent existing at the time the defendant's conviction became final,” 489 U.S. at 301 (plurality opinion), together constitute a substantial barrier to abusive filings. That barrier will be worth little if it can be circumvented by the simple expedient of labelling a claim a mixed question.

sidering a challenge to the sufficiency of the evidence supporting a state conviction is whether, viewing all the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.* at 318-319. In making that judgment, the *Jackson* Court stated, a federal habeas court “has a duty to assess the historical facts when it is called upon to apply a constitutional standard to a conviction obtained in a state court.” *Id.* at 318. The Court equated the standard of review of a criminal conviction on *direct* review with that on *collateral* review. *Ibid.*

In our view, the premises underlying *Jackson* no longer obtain.⁹ First, *Teague*, *Butler*, and *Saffle* mean that even purely legal determinations are subject to deferential review, limited to determining whether the state court acted reasonably and in good faith. Moreover, the Court in *Jackson* viewed a federal court's role in a habeas corpus proceeding as no different from that undertaken in direct appeal from either a federal or state criminal conviction. See 443 U.S. at 317-318. Thus, the Court relied upon federal criminal cases and cases on direct appeal as support for the application of the same sufficiency of the evidence standard in habeas corpus and on direct review. *Id.* at 318. Indeed, the Court noted the practice of the federal courts independently to assess the facts supporting a criminal conviction on direct review, and explicitly stated that “[t]he same duty obtains in a federal habeas corpus proceeding.” *Ibid.*

⁹ We do not question *Jackson*'s substantive standard for determining whether evidence was sufficient to support a criminal conviction, but only the standard of review for applying it in federal habeas corpus.

This Court's decisions since *Jackson* have emphatically rejected any analogy between habeas corpus review of state judgments and review on direct appeal. The Court's adoption of Justice Harlan's approach to retroactivity in *Teague* was itself premised upon a recognition that a criminal conviction becomes final after a direct appeal, and that a habeas proceeding is a subsequent and separate action, in which different legal standards should apply. Habeas corpus is "a collateral remedy, providing an avenue for upsetting judgments that have become otherwise final. It is not designed as a substitute for direct review." *Teague*, 489 U.S. at 306 (plurality opinion), quoting *Mackey v. United States*, 401 U.S. at 682-683 (separate opinion of Harlan, J.). See also *United States v. Frady*, 456 U.S. 152, 165 (1982) ("we have long and consistently affirmed that a collateral challenge may not do service for an appeal").

Thus, in *Teague* the Court approached the question of retroactivity on habeas corpus, not by reference to direct appeal, but by analysis of the "nature, function, and scope of" habeas corpus. 489 U.S. at 306 (plurality opinion), quoting *Mackey*, 401 U.S. at 682 (separate opinion of Harlan, J.). This inquiry, which should be the basis for analyzing the proper standard of review in this case, was not one that the Court undertook in *Jackson*. After *Teague*, the "nature, function, and scope" of habeas corpus indicates that deference to state court application of law to facts is appropriate. It serves no function, and imposes great costs on the federal system, when federal habeas review results in invalidation of a ten-year old state criminal conviction based on mere disagreement over what is concededly a "judgment" call.

Apart from its decision in *Jackson v. Virginia*, this Court has elsewhere treated mixed questions of law

and fact as subject to de novo review in habeas corpus proceedings. See *Miller v. Fenton*, 474 U.S. 104 (1985); *Strickland v. Washington*, 466 U.S. 668, 698 (1984); *Cuyler v. Sullivan*, 446 U.S. 335, 341-342 (1980); *Brewer v. Williams*, 430 U.S. 387, 403-404 (1977); *Neil v. Biggers*, 409 U.S. 188, 193 n.3 (1972); *Irvin v. Dowd*, 366 U.S. 717, 723 (1961); *Brown v. Allen*, 344 U.S. 443, 507-508 (1953) (opinion of Frankfurter, J.).¹⁰ In our view, although there is no reason to question the substantive standards established by these cases, the underlying legal premise for the rule that the scope of review of mixed questions is de novo has been undermined by this Court's decisions in *Teague*, *Butler*, and *Saffle*. For the reasons we have stated, the values of consistency and workability, as well as the fundamental function of habeas corpus in our federal system, would be best served by affording deference to reasonable, good faith state court application of law to facts in criminal proceedings.

Adoption of this rule is needed in order to bring the law into line with *Teague* and its progeny. This Court has recognized that it has not "always followed an unwavering line in its conclusions as to the availability of the Great Writ. [The] development of

¹⁰ Since *Teague* and the cases applying it were decided, this Court has on occasion considered habeas corpus claims based on application of settled law to historic facts, and has not questioned that the proper standard of review is de novo. See, e.g., *Lewis v. Jeffers*, 110 S. Ct. 3092, 3102-3104 (1990) (reviewing state appellate court factual findings under the *Jackson v. Virginia* standard and determining that the state court's application of law to fact was rational); *Estelle v. McGuire*, 112 S. Ct. 475 (1991) (rejecting claim that admission of certain evidence at a state criminal trial violated due process). The question of the proper standard of review was not, however, briefed or argued in either case.

the law of federal habeas corpus has been attended, seemingly, with some backing and filling." *Teague*, 489 U.S. at 308 (plurality opinion), quoting *Fay v. Noia*, 372 U.S. 391, 411-412 (1963). See also *Stone v. Powell*, 428 U.S. at 474-482. As Justice O'Connor has noted, "the Court has long recognized that habeas corpus has been traditionally regarded as governed by equitable principles * * * and thus has long defined the scope of the writ by reference to a balancing of state and federal interests." *Duckworth v. Eagan*, 492 U.S. at 213 (O'Connor, J., concurring) (internal quote and citation removed). See also *Kuhlmann v. Wilson*, 477 U.S. 436 (1986) (plurality opinion); *Rose v. Lundy*, 455 U.S. 509, 546-548 (1982) (Stevens, J., dissenting).

II. IN THIS CASE, THE STATE COURTS ACTED REASONABLY AND IN GOOD FAITH IN REJECTING RESPONDENT'S SUFFICIENCY OF THE EVIDENCE CLAIM

Applying a rule of deference to reasonable state court treatment of mixed questions of law and fact, the outcome in this case is clear. Here, a federal appellate court reviewed a state record more than ten years after the state judgment became final, and concluded that a unanimous jury of twelve citizens of the Commonwealth of Virginia acted irrationally. The court further decided that a state trial and appellate court (not to mention a federal district court) were incorrect in concluding that a rational fact finder could conclude that the evidence against respondent established his guilt beyond a reasonable doubt.

The court of appeals did not question that the proper legal standard was applied at all levels of the state proceedings. The court of appeals recognized

that it was making a "judgment" call, but it concluded that the jury was *irrational* in inferring that respondent's false explanation of where he obtained the goods in question indicated that he had stolen them. Although the court of appeals recognized that the jury disbelieved respondent's explanation, it ignored the probative force of the conclusion that necessarily follows from that disbelief—that respondent committed perjury in explaining how he came to possess the goods in question. It was not irrational for the jury to infer from respondent's perjury that he in fact stole those goods. See, *e.g.*, *United States v. Restrepo-Contreras*, 942 F.2d 96, 99 (1st Cir. 1991) (jury entitled to treat incredible testimony as evidence of guilt), cert. denied, No. 91-6502 (Jan. 21, 1992).

Thus, there is no basis on which to conclude that the state courts acted unreasonably or in bad faith in determining that the evidence against respondent was sufficient to support his conviction. Indeed, what happened in this case demonstrates the need for the rule of deference that we advocate. There is no reason that the Fourth Circuit, ten years after the fact, was better situated than the state courts to make the necessary judgment call.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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